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Malakoff Bhd v Pemungut Hasil Tanah Seberang Perai Utara, Butterworth

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–2 OF 2003 (P)
B HAIDAR CJ (MALAYA), STEVE SHIM CJ (SABAH & SARAWAK) AND ARIFIN ZAKARIA JCA
22 OCTOBER 2004

Land Law — Acquisition of land — Compensation — Estate land — Objection against compensation awarded — Factors to consider in awarding compensation — Whether correct
C *comparables referred to — Appeal against award — Burden of proof — Whether upon party contesting value of compensation awarded — Whether discharged — Land Acquisition Act 1960 ss38, 49(1)*

The land was acquired from the appellant in 1992. After an enquiry, the district land administrator awarded the sum of RM9,108,890 (equivalent to
D RM28,327 per acre) as compensation for the said land. The appellant was dissatisfied with the said award and filed its objection under s 38(1) of the Land Acquisition Act 1960. The objection came for hearing before the High Court judge. The trial judge increased the award to RM35,000 per acre. Still dissatisfied with the award, the appellant appealed. The counsel for the appellant
E contended that the trial judge erred in his finding by taking into consideration comparable No 4. He further submitted that the best comparable was comparable No 8. Counsel for the respondent however argued that the trial judge had correctly relied on comparables No 4 and No 8 and had arrived at the award after making the necessary adjustments based on both size and location.

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Held, dismissing the appeal:

(1) In determining market value, the courts have adopted the comparable method of valuation of land where there is ample evidence of sales or awards involving similar lands (see para 4); *Ng Tiou Hong v Collector Of*
G *Land Revenue, Gombak* [1984] 2 MLJ 35 followed.

(2) The trial judge had correctly concluded that the fair market value for the land was RM35,000 per acre in that he had used both comparables as basis and made the necessary adjustments for size and location (see para 13).

H (3) In the instant appeal, the appellant had failed to discharge the burden which was upon him to prove that the trial judge's assessment was inaccurate (see para 15).

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[**Bahasa Malaysia summary**

Tanah tersebut diambil dari perayu dalam tahun 1992. Pentadbir tanah daerah memberi award sebanyak RM9,108,890 (bersamaan dengan RM28,327 seekar)

sebagai pampasan. Perayu tidak puas hati lalu memfailkan satu bantahan dibawah s 38(1) Akta Pengambilan Tanah 1960. Bantahan tersebut didengar di hadapan hakim Mahkamah Tinggi. Hakim bicara menaikkan award kepada RM35,000 seekar. Masih tidak puas hati, perayu merayu lagi. Peguam perayu mengatakan bahawa hakim bicara telah tersilap di dalam keputusannya kerana mengambil kira perbandingan No 4. Beliau seterusnya mengatakan bahawa perbandingan yang paling sesuai adalah perbandingan No 8. Peguam responden sebaliknya mengatakan bahawa hakim bicara telah dengan betulnya mengambil kira perbandingan No 4 dan No 8 dan telah mencapai keputusannya selepas membuat pelarasan yang sewajarnya berdasarkan saiz dan lokasi tanah.

Diputuskan, menolak rayuan:

(1) Dalam memutuskan nilai pasaran, mahkamah memakai kaedah perbandingan nilai hartanah bila terdapat bukti yang secukupnya berkenaan jualan dan pemberian award yang melibatkan hartanah yang serupa (lihat perenggan 4); *Ng Tiou Hong v Collector Of Land Revenue, Gombak* [1984] 2 MLJ 35 diikut.

(2) Hakim bicara telah mencapai keputusan dengan betul bahawa nilai pasaran hartanah yang wajar adalah RM35,000 seekar dalam mana beliau telah menggunakan dua perbandingan berkenaan sebagai dasar dan telah membuat pelarasan yang perlu untuk saiz dan lokasi (lihat perenggan 13).

(3) Di dalam rayuan semasa, perayu gagal melepaskan beban bukti yang berada padanya untuk membuktikan bahawa taksiran hakim bicara adalah tidak tepat (lihat perenggan 15)].

Notes

For cases on compensation for acquisition of estate land, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1625–1626

For cases on compensation for acquisition of land, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1582–1604.

For cases on market value, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1640–1663

For cases on objections against amount of compensation awarded, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) para 1673.

Cases referred to

Bertam Consolidated Rubber Co Ltd v Collector Of Land Revenue Province Wellesley [1984] 1 MLJ 164 (refd)

Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng And Cross Appeals [1971] 1 MLJ 43 (folld)

Nanyang Manufacturing Co v The Collector of Land Revenue, Johore [1954] 20 MLJ 69 (refd)

A *Ng Tiou Hong v Collector Of Land Revenue, Gombak* [1984] 2 MLJ 35 (folld)
Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan [1993] 3 MLJ 51 (refd)

B **Legislation referred to**

Land Acquisition Act 1960 s 38(1)

Appeal from: Land Reference No 15–29 of 1993 (High Court, Pulau Pinang)

C *Wong Chong Wah (Lim Koon Huan with him) (Skrine) for the appellant.*
Hamdan bin Hamzah Asst State Legal Advisor (State Legal Advisor's Office, Pulau Pinang) for the respondent.

D **Arifin Zakaria JCA** (delivering judgment of the court):

[1] The background facts, which are not in dispute, are briefly as follows. The declaration of intended acquisition of the scheduled land was published in the government gazette of the State of Pulau Pinang dated 24 September 1992. The declared purpose of the acquisition is 'Tujuan Awam'. The land is held
E under Lot No 2020, MK6, Daerah Seberang Perai Utara, comprising an area of 137.41163 hectares ('the scheduled land'). The area to be acquired is 130.122 hectares. The scheduled land is an agricultural holding under oil palm cultivation located in Pongsu Seribu which is essentially an agricultural area, with a variety of holdings ranging from large estates to small holding. The main cultivation
F being oil palm and rubber. Other forms of development in or near the vicinity of the scheduled land include housing schemes, Sekolah Menengah Kebangsaan Ugama Al-Irshad, and Jabatan Perkhidmatan Haiwan. In terms of location, it is about 4.8km in distance from both Kepala Batas and Tasek Gelugor and 18.5km from Butterworth town. The scheduled land is a second layer land
G fronting an unsurfaced road, which joins Jalan Pongsu Seribu. Basic amenities like water supply, electric supply and public transport are available in the vicinity of the scheduled land.

[2] After an enquiry the district land administrator awarded the sum of RM9,108,890 (equivalent to RM28,327 per acre) as compensation for the
H scheduled land. This is contained in form G dated 16 November 1992 at p 19 of the appeal record. The appellant was dissatisfied with the said award and filed its objection under s 38(1) of the Land Acquisition Act 1960 ('the Act'). The objection came for hearing before Mokhtar JCA, sitting as a High Court judge in Penang. The learned judge increased the award to RM35,000 per acre,
I an increase of RM6,673 per acre from the award of the district land administrator. The appellant is still dissatisfied with the said award of the learned judge and hence this appeal.

[3] Before us, it is contended that the compensation should have been increased to at least RM48,000 per acre based on appellant's valuer's comparable No 8, which is the award made by district land administrator for the same land on 13 February 1992, some seven months prior to the present acquisition. It is further contended that the learned judge in making the award failed to give sufficient weight to the comparables relied upon by the appellant's valuer. For those reasons the appellant maintained that the award by the learned judge of RM35,000 is erroneous as the compensation sum is well below the true market value of the scheduled land.

[4] In determining market value, our courts as a matter of course have adopted the comparable method of valuation of land where there is ample evidence of sales or awards involving similar lands. What this method entails was succinctly explained by the Federal Court in *Ng Tiou Hong v Collector Of Land Revenue, Gombak* [1984] 2 MLJ 35 where at pp 37–38 in the following words:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. Itmust be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions. Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future for eg the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like. Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence. (*Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd, Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam, and Nanyang Manufacturing Co v Collector of Land Revenue, Johor*).
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> The safest guide is evidence of sales of similar land of similar quality or position in the locality at or prior to the time of the acquisition. The prices paid for such sales can be used as comparables subject to making allowances for all the circumstance.

[5] In the present case the valuer for the appellant Azmi & Co Sdn Bhd assessed the market value of the scheduled land to be approximately RM50,000 per acre. They relied on eight comparable of sales in support of their valuation, namely:

(1)

Lot No	3130 (Mukim 8)
Area	101,818 Acres
Date	29 October 1982
Analysis	RM35,000 per acre

(2)

Lot No	698 (Mukim 12)
Area	1,012 Acres
Date	21 August 1991
Analysis	RM32,600 per acre

(3)

Lot No	659 (Mukim 6)
Area	2,119 Acres
Date	30 June 1990
Analysis	RM47,192 per acre

(4)

Lot No	1131, 2081, 2462, 2556, 3769, & etc
Area	2,000 Acres (approx)
Date	20 December 1991 (Agreement)
Analysis	RM25,012 per acre

(5)

Lot No	3252 (Mukim 12)
Area Acquired	12 Acres
GN/Date	November 1984
Collector's Award	RM40,000 per acre

(6)

Lot No	2019 (Mukim 8)
Area Acquired	25 Acres
GN/Date	36/31/01/1985
High Court's Award	RM40,000 per acre
Land Ref No	15–11–86

(7)

Lot No	3139 (Mukim 12)
Area Acquired	16 Acres
GN/Date	300/07/11/1991
Collector's Award	RM35,000 per acre

(8)

Lot No	2020 (Mukim 6)
Area Acquired	18 Acres
GN/Date	42/13/02/1992
Collector's Award	RM48,000 per acre

[6] The respondent relied on the valuation report prepared by Jabatan Penilaian dan Perkhidmatan Harta, Kementerian Kewangan, Malaysia. The government valuer valued the scheduled land at RM28,000 per acre which is equivalent to RM70,000 per hectare. She premised her assessment of value on four comparables namely:

(1)

Lot No	Sbbg 2020 Mk 6 SPU
Area	18 Acres
Date	5 September 1992 (PT Case)
Analysis	RM48,000 per acre
Title	MG FIRST GRADE (SEBAHAGIAN LADANG BERTAM)

(2)

Lot No	3769G Mk 6 SPU
Area	2,068.71 Acres
Date	18 August 1992 (DS Case)
Analysis	RM26,000 per acre
Title	MG FIRST GRADE

(3)

Lot No	361G
Area	459.32 Acres
Date	6 August 1995
Analysis	RM32,670 per acre
Title	MG B & C

(4)

Lot No	3436 & 3438
Area	78.1647 Acres
Date	12 October 1992 (P)
Analysis	RM43,560 per acre
Title	Gr FIRST GRADE

[7] The learned judge in his judgment had considered all the comparables put forth by the parties and having done that he came to the conclusion that only two comparables which are suited for the purposes of determining the market value of the schedule land: that is the appellant's comparable No 4 (respondent's comparable No 2) and the appellant's comparable No 8 (respondent's comparable No 1). For ease of reference we will refer to these two comparables as comparables No 4 and No 8. Relying on these two comparables he came to his finding that the fair market value for the scheduled land is RM35,000 per acre.

[8] The learned counsel for the appellant contended that the learned judge erred in his finding by taking into consideration comparable No 4 which was the sale of Bertam Estate with an area of approximately 2,000 acres. The best

comparable, in the circumstances of this case, he submitted is comparable No 8, which was part of the scheduled land, which was acquired some seven months earlier. There an award of RM48,000 was made by the district land administrator and accepted by the land owner. In support the learned counsel cited, among others, the case of *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 20 MLJ 69 where it was held that the best guide to determine the fair market value is the evidence of sales of the same or similar land in the neighbourhood. And relying on *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 164 and *Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng And Cross Appeals* [1971] 1 MLJ 43 he further contended the scheduled land ought to be valued as a whole. He concluded by saying that in the circumstances of this case the best comparable is comparable No 8 and based on the said comparable the fair market value of the scheduled land is in the region of RM48 to RM50 as claimed by the appellant. The learned senior federal counsel, who appeared for the respondent, argued that the learned judge had correctly relied on comparables No 4 and No 8, which are the common comparables, and had arrived at the award after making the necessary adjustments based on both size and location. In the circumstances he maintained that the appeal by the appellant is devoid of any merit.

[9] The approach to be adopted by this court in an appeal under s 49 of the Act is amply set out in the judgment of the *Collector of Land Revenue v Alagappa Chettiar; Collector Of Land Revenue v Ong Thye Eng* (supra) where at p 44 it states:

> The appeal to the Federal Court under s 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inference and conclusions of the High Court and to draw its own inferences and conclusions *Aik Ho & Co Ltd v Superintendent of Lands and Surveys* (1968) 2 PCC 493, (1969) AC 1. But where the inferences and conclusions of the High Court are based upon findings of primary fact which are dependent upon the credibility of the oral evidence of witnesses whom the trial judge alone has had the advantage of hearing and seeing an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly where expert oral evidence of values has been called at the trial and discloses a conflict of opinion between them, the judge's finding as to which he regarded as most reliable is entitled to considerable weight though it is less sacrosanct then his findings of pure fact which are dependent upon his view of whether or not particular witness were telling the truth. Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong.

[10] In the present case the learned judge relied on comparables No 4 and No 8 and for reasons stated in his judgment he rejected the other comparables

relied upon by the valuer for the appellant and the government valuer. We agree with the reasons proffered by the learned judge in rejecting those comparables.

[11] We will now consider comparables Nos 4 and 8. Firstly, comparable No 4. This is a transaction involving the sale of Bertam Estate by Bertam Consolidated Rubber Co Ltd to Bertam Properties Sdn Bhd. The date of transaction was 20 December 1991 some nine months before the acquisition of the scheduled land. The declared transacted price was RM25,012 per acre which was increased to RM26,000 by the Pejabat Duti Setem. Even though this comparable is much bigger in size compared to the scheduled land, it should be noted that both are estate lands. As aptly observed by Mohamed Dzaiddin SCJ in *Siah Brothers Plantation Sdn Bhd v Pentadbir Tanah dan Daerah Kuantan* [1993] 3 MLJ 51 for the purpose of determining the market value of estate land, comparison ought to be made with other estate land. Therefore, subject to necessary adjustments we agree with the learned judge that the appellant's comparable No 4 is a good comparable to be considered in determining the fair market value of the scheduled land.

[12] The other comparable relied upon by the learned judge is comparable No 8, which was part of the scheduled land acquired earlier by the government. The total area acquired was only 18.4 acres. Since the scheduled land is unarguably much larger in size than this comparable, therefore, the government valuer in his report had made a downward adjustment of 40% on account of size, this brings the adjusted value to RM71,167 per hectare or RM26,300 per acre for the scheduled land.

[13] It is clear from the judgment of the learned judge that in arriving at his award he used both comparables as a basis and after making the necessary adjustments for size and location he came to his finding that the fair market value for scheduled land is RM35,000 per acre. In our view, the adjustments, in the circumstances, are reasonable, taking into account the difference in size of the two comparables compared to that of the scheduled land and also the location of the scheduled land. In this regard we think the learned judge had acted on correct principles. For support we only need to refer to *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* (supra) where Mohamed Azmi FCJ at p 165 observed:

> In considering the three previous acquisition awards in respect of Bertam Estate, the learned judge reminded himself of what was stated at p 205 of Aggrawalla, 3rdEdition, which says that evidence of previous acquisition awards which were accepted are relevant to show the market value, and that prices which are given by the Collector to people whose lands are acquired and who accepted them are valuable evidence in ascertaining the market value of the property. Although he rejected Mr Loh's valuation, he held in favour of the appellants by enhancing the Collector's award from $12,600 to $15,000 per acre. In doing so he used KEMAS Centre acquisition on 30 August 1979 as the cornerstone of his valuation. As set out above, KEMAS Centre was acquired at $20,000 per acre from the appellants.

> The two acres for KEMAS Centre just as the 20 acres of subject land formed part of Bertam Estate. In our view, KEMAS Centre acquisition award which was offered and accepted by the appellants is relevant in determining the market value, but adjustments must be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land.

[14] In the above case his lordship noted in particular, adjustments must be made as to size, time factor and other dissimilarities even though the comparable relied upon was part of the same estate as the acquired land. Learned counsel further criticised the learned judge for not affording sufficient reasons as to how he arrived at his estimation of the fair market value. We would in this regard adopt the observation of the learned author of *Aggarwala's Compulsory Acquisition of Land in India*, 7th Ed p 553 which reads:

> A determination of value is 'an enquiry relating to a subject abounding in uncertainties where, there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at'. It had been observed that in all valuations, judicial or otherwise, there must be room for inference and inclination of opinions, which being more or less conjectural are difficult to reduce to exact reasoning or to explain to other, and it is unfair to require an exact exposition of reasons for the conclusions arrived at, the question of fair compensation is not an algebraic problem which would be solved by an abstract formula.

[15] To that we would add the words of the Lord Diplock in *Collector of Land Revenue v Alagappa Chettiar; Collector Of Land Revenue v Ong Thye Eng* (supra) at p 44 which reads: '… an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong'.

[16] The burden lies on the appellant to satisfy this court that the learned judge's assessment was wrong and this, the appellant failed to do. For the above reasons the appeal is dismissed with costs to the respondent. Deposit to account of taxed costs.

Appeal dismissed.

Reported by Izzaty Izzuddin